

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

PITTSFIELD GENERATING COMPANY, L.P.,)
)
Plaintiff,)
)
v.)
)
DEVON CANADA CORPORATION,)
)
Defendant.)
)
)

**DEFENDANT DEVON CANADA CORPORATION'S
RESPONSE TO PLAINTIFF'S REQUEST FOR EXPEDITED
HEARING ON PENDING MOTIONS**

Devon Canada Corporation (“Devon”) hereby responds to the Request for Expedited Hearing on Pending Motions by Plaintiff Pittsfield Generating Company, L.P. (“PGC”).

PGC refers to its purported financial loss, quantified in Canadian dollars, as the only reason to support its request for expedited treatment. Under the circumstances of this case, such a financial reason does not create an emergency that necessitates more expeditious action than the Court would otherwise take.¹ Furthermore, the suggestion that PGC is suffering daily monetary “losses” is misleading. PGC is not out of pocket anything. The sum that PGC identifies is the speculative profit that it hopes to make with its interpretation of the contract. Finally, while PGC points to the cessation of gas deliveries by Devon, PGC overlooks the fact

¹ PGC’s request for Expedited Hearing was filed after PGC already had filed its Opposition to Devon’s original motion to dismiss and after PGC mooted that motion by filing its First Amended Complaint. It also was filed the same day that Devon held a Local Rule 7.1(A)(2) conference with PGC on Devon’s motion to dismiss the First Amended Complaint, although PGC did not mention its imminent request for expedited treatment during that conference.

that it was PGC who set that action in motion by entering into the Termination Agreements.

While Devon does not object to an oral hearing on the pending motions in the event that the Court concludes that such a hearing would be helpful to the Court, PGC has not established any entitlement to expedited proceedings.

Dated: October 26, 2004

Respectfully submitted,

/s/ Anita B. Bapooji

William L. Prickett (BBO #555341)
Anita B. Bapooji (BBO #644657)
Testa, Hurwitz & Thibeault, LLP
125 High Street
Boston, MA 02110
Telephone: 617-248-7000
Facsimile: 617-248-7100

Counsel for Defendant
Devon Canada Corporation

John M. Simpson
Michelle C. Pardo
Fulbright & Jaworski, LLP
801 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Telephone: 202-662-0200
Facsimile: 202-662-4643

Of Counsel
Devon Canada Corporation

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on the 26th day of October, 2004, via electronic service, and first class mail, postage prepaid, on the following:

Robert J. Muldoon
David A. Brown
Sherin and Lodgen LLP
101 Federal Street
Boston, MA 02110

/s/ Anita B. Bapooji
Anita B. Bapooji